

**GROUP OF GOVERNMENTAL EXPERTS OF
THE STATES PARTIES TO THE CONVENTION
ON PROHIBITIONS OR RESTRICTIONS ON
THE USE OF CERTAIN CONVENTIONAL
WEAPONS WHICH MAY BE DEEMED TO BE
EXCESSIVELY INJURIOUS OR TO
HAVE INDISCRIMINATE EFFECTS**

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Working Group on Explosive Remnants of War

**National interpretation and implementation of International Humanitarian Law with
regard to the risk of Explosive Remnants of War**

Presented by Norway

Introduction

1. In working paper CCW/GGE/WG.1/WP.6, presented during the 5th meeting of the GGE, Norway proposed among other things that States declare how existing international humanitarian law (IHL) is interpreted and implemented in practice on the national level, and describe how the risk of ERW influences military planning and the conduct of military operations. We continue to be of the view that such descriptions would provide valuable information that could be used as a basis to answer the question whether existing IHL may be considered adequate to tackle the humanitarian problems caused by ERW.

2. Norway would therefore again encourage all States to provide such descriptions. In this working paper, we would like to provide a description of which restrictions and obligations existing IHL imposes on the planning and conduct of Norwegian military operations, and provide some information on additional self-imposed Norwegian restrictions on the use of certain munitions.

Norwegian national restrictions related to the use of cluster bombs

3. On the basis of a decision adopted by the Norwegian parliament on 14 June 2001 and subsequent debates in the parliament on the use of cluster bombs, all air-delivered cluster bombs previously in Norwegian stock have been destroyed, because of their low level of precision and high dud rate.

4. In addition to this, the Norwegian Minister of Defence has issued instructions to the Norwegian armed forces concerning the use of air-delivered cluster munitions in military operations. According to these instructions, all use of such munitions in future military operations shall be subject to the prior consideration and consent of the Norwegian Ministry of Defence.

5. The use of air-delivered cluster munitions in the context of peacetime training and exercises will also require the prior consideration and consent of the Norwegian Ministry of Defence.

6. Furthermore, the instructions state that cluster munitions with high dud rates/without self-destruct mechanisms shall under no circumstances be acquired by the Norwegian armed forces.

National interpretation and implementation: IHL and additional national restrictions

7. For the military planning process on the strategic level of command, both existing IHL principles as interpreted by Norway in CCW/GGE/WG.1/WP.6 (*the principle of distinction, the principle of proportionality, military necessity and precautions in attack*), as well as the Norwegian national restrictions, will have to be taken into consideration in the planning of a military operation, and i.a. influence the choice of forces/weapons that would be used in the operation.

8. For instance, with regard to Norwegian participation in international military operations, the Norwegian Armed Forces do not use air-delivered cluster bombs that may be expected to have a high dud rate.

9. The above-mentioned factors will also need to be taken into account when the Rules of Engagement (ROE) for the up-coming operation is established.

10. In the planning of an attack on the operational level of command (the targeting process) the military planners identify i.a. the targets that are to be attacked, as well as the means and methods to use in the attack. In this process, many different factors must be taken into account, such as *military necessity* and *the definition of legitimate military objects*.

11. Among the basic principles that need to be taken into account, and which is particularly relevant in this context, is the *principle of proportionality*. For the military planners on the operational level or for the military commander carrying out an attack (depending on at which level the decision is made), this implies striking a balancing act between the military advantage of the attack and the foreseeable humanitarian consequences of the attack. This assessment has to be made on the basis of many different factors, including what kinds of weapons systems are available at the time, what level of force is deemed necessary to fulfil the mission, what humanitarian damage may be expected according to the information available at the time etc.

12. In this context, at least the immediate effects of ERW are undoubtedly a relevant factor, especially if one is planning an attack against a military target located within a concentration of civilian population. However, the extent to which one may expect a military commander to take the *long-term* effects of ERW into account is limited¹.

¹ We note in this context that Professor Greenwood in CCW/GGE/I/WP.10 states that the long-term risks related to ERW is dependent of too many factors to be assessable at the time of the attack, and that Australia in CCW/GGE/III/WP.6 states that "it is probably undecided whether the rule of proportionality involves an assessment of the risk and effect of weapons malfunctioning or of human error".

Conclusion

13. In conclusion, we note that the existing IHL does impose *certain* obligations and restrictions on the planning and conduction of military operations, although it is still our view that these obligations and restrictions alone do not provide sufficient protection for the civilian population against the humanitarian consequences related to ERW, and that further regulations on the use of such munitions may be needed.

14. Furthermore, some countries may have self-imposed restrictions and policy that go further than the restrictions contained in the existing IHL. For the Norwegian Armed Forces, these restrictions i.a. imply that only air-delivered cluster bombs with a high reliability rate/self destruct mechanisms may be used in international military operations.
